APPENDIX.

Excerpt from Transcript of Testimony.
Hearing at Memphis, Tennessee.
April 23, 1942.

DOCKET NO. 107356.

WILSON MILLING COMPANY, a Dissolved Corporation, *Petitioner,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

(MR. GOODNER, Attorney for Petitioner)

Q. On what basis of accounting did the Wilson Milling Company keep books, do you know?

A. Accrual.

Q. These returns, do they show the accrual basis, Exhibits 4, 5, and 6?

A. Let me look at one of them.

Q. I hand you Exhibit No. 4, the 1935 return. State if that is prepared on the accrual basis?

A. There was a beginning inventory and ending inventory there.

Q. When the taxpayer has inventories does that mean it is on the accrual basis, the corporation?

A. Yes, sir.

Q. Is the '36 return prepared on the accrual basis?

A. Yes, sir.

Q. I call your attention to Exhibit No. 6, the 1937 return. In answer to the question "Is this return made on a cash receipts and disbursements basis?" It says, "Yes". Will you explain that answer, if you can?

A. That was just an error in stating that, because you have got a beginning and ending inventory right here on the books.

Q. In '37 did you have any inventory? You testified, I believe, that the Company ceased operations in 1936, didn't you?

A. Yes, sir.

Q. Would it have any inventories?

A. It didn't have any inventories in '37.

Q. And the nature of its operations in 1937 was what?

A. Closing up the business and during that time they received a refund.

Q. Then I will ask you if that return, if you understand accrual and cash receipts, to be on both bases, as far as the 1937 return? Would it be a correct return on either basis?

A. It would be a cash receipt basis.

Q. On the actual receipts basis?

A. On the actual receipts basis, but you can't change the form of filing it.

MR. GOODNER: You may cross examine.

MR. MITCHELL: (Attorney for Respondent) No cross examination.

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 41. GENERAL RULE.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. (For use of inventories, see section 22(c).)

SEC. 43. PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN.

The deductions and credits (other than the dividends paid credit provided in section 27) provided for in this title shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period.

SEC. 501. TAX ON NET INCOME FROM CERTAIN SOURCES.

(a) The following taxes shall be levied, collected, and paid for each taxable year (in addition to any other tax on net income), upon the net income of every person which arises from the sources specified below:

(1) A tax equal to 80 per centum of that portion of the net income from the sale of articles with respect to which a Federal excise tax was imposed on such person but not paid which is attributable to shifting to others to any extent the burden of such Federal excise tax and which does not exceed such person's net income for the entire taxable year from the sale of articles with respect to which such Federal excise tax was imposed.

(2) A tax equal to 80 per centum of the net income from reimbursement received by such person from his vendors of amounts representing Federal excise-tax burdens included in prices paid by such person to such vendors, to the extent that such net income does not exceed the amount of such Federal excise-tax burden which such person in turn shifted to his vendees.

(3) A tax equal to 80 per centum of the net income from refunds or credits to such person from the United States of Federal excise taxes erroneously or illegally

collected with respect to any articles, to the extent that such net income does not exceed the amount of the burden of such Federal excise taxes with respect to such articles which such person shifted to others.

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(d) The net income from reimbursement or refunds specified in subsection (a) (2) or (3) shall be computed as follows: From the total payment or accrual (1) of reimbursement to the taxpayer from vendors for amounts representing Federal excise tax burdens included in prices paid by the taxpayer to such vendors or (2) of refunds or credits to the taxpayer of Federal excise taxes erroneously or illegally collected, there shall be deducted the expenses and fees reasonably incurred in obtaining such reimbursement or refunds.

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(1) The taxes imposed by subsection (a) shall be imposed on the net income from the sources specified therein, regardless of any loss arising from the other transactions of the taxpayer, and regardless of whether the taxpayer had a taxable net income (under the income-tax provisions of the applicable Revenue Act) for the taxable year as a whole; except that if such application of the tax imposed by subsection (a) is held invalid, the tax under subsection (a) shall apply to that portion of the taxpayer's entire net income for the taxable year which is attributable to the net income from the sources specified in such subsection.

SEC. 503. ADMINISTRATIVE PROVISIONS.

(a) All provisions of law (including penalties) applicable with respect to taxes imposed by Title I of this Act, shall, insofar as not inconsistent with this title, be applicable with respect to the taxes imposed by this title, except that the provisions of sections 101, 131, 251, and 252 shall not be applicable.

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